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Attorneys for Defendant INCASE DESIGNS,
CORP

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO**

JERALD A. BOVINO,
Plaintiff,
vs.
INCASE DESIGNS, CORP.,
Defendant.

Case No.: 3:14-cv-02105-VC

**STIPULATION AND [PROPOSED]
ORDER WITHDRAWING MOTION TO
DISMISS**

STIPULATION

1 **WHEREAS** currently pending before the court is a Motion to Dismiss Plaintiff's Claims
 2 of Indirect and Willful Infringement in the First Amended Complaint that has been filed by
 3 Defendant Incase Designs Corp ("Incase");
 4

5 **WHEREAS** Plaintiff Jerald A. Bovino ("Bovino") has recently offered to amend his First
 6 Amended Complaint;

7 **WHEREAS** the parties desire to narrow the issues in dispute, and eliminate the need
 8 for the court to rule on a motion to dismiss a complaint that the Bovino has agreed to amend;

9 **NOW, THEREFORE**, in consideration of the agreements set forth below, the parties
 10 hereby stipulate as follows:

11 1. The parties agree, pursuant to F.R.C.P. 15a)(2), that Bovino may amend his
 12 pleading and file a Second Amended Complaint no later than September 30, 2014;

13 2. The Second Amended Complaint will not contain any of the following:

- 14 a. A claim of liability for direct infringement;
- 15 b. A claim of liability for willful Infringement;
- 16 c. A request for an injunction;
- 17 d. A claim of liability for indirect infringement prior to the filing of suit; and
- 18 e. A request for damages for any activity occurring prior to the filing of suit.

19 3. The Second Amended Complaint will be limited to asserting indirect liability
 20 based on post-suit conduct alone. This is not an admission that Incase believes any post-suit
 21 conduct exists that supports an indirect liability claim.

22 4. In light of the above, Incase agrees to withdraw its pending Motion to Dismiss
 23 Plaintiff's Claims of Indirect and Willful Infringement in the First Amended Complaint, and the
 24 parties jointly request that the court take the motion to dismiss hearing off calendar. Incase
 25 reserves the right to move to dismiss again pursuant to FRCP 12(b)(6) if it believes that the
 26 Second Amended Complaint still fails to give fair notice of the plaintiff's claim and the grounds
 27 upon which it rests, or to state a claim for relief that follows plausibly from the facts alleged.

5. Lastly, Bovino agrees that he will provide Incase with a copy of the defendant's Invalidity Contentions and supporting prior art that will be served in the *Jerald. A. Bovino v. Levenger Company* case, within seven business day of receipt.

Dated: August 27, 2014

By: /s/ Ronnie Fischer
Ronnie Fischer

Attorney for Plaintiff Jerald A. Bovino

Dated: August 27, 2014

Mitchell + Company

By: /s/ Brian E. Mitchell
Brian E. Mitchell

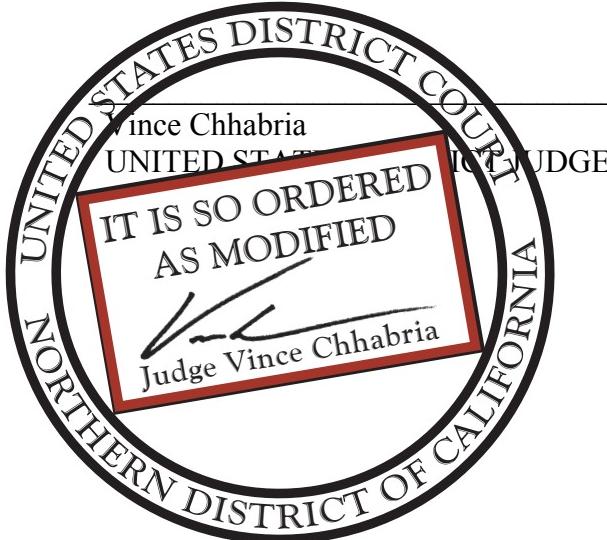
Attorney for Defendant Incase Designs, Corp.

[PROPOSED] ORDER AS MODIFIED: a case management conference is scheduled for October 7, 2014, at 10:00 a.m. SO ORDERED. A joint cmc statement is due September 30, 2014.

Pursuant to stipulation, IT IS SO ORDERED.

A joint cmc statement is due September 30, 2014.

Dated: August 27, 2014



ATTESTATION

I, Marcel F. De Armas, am the ECF User whose ID and password are being used to file this document. In compliance with Local Rule 5-1(i)(3), I hereby attest that Ronnie Fischer has concurred in this filing.

Dated: August 27, 2014

By:s/ Marcel F. De Armas
Marcel F. De Armas